



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/169326

PRELIMINARY RECITALS

Pursuant to a petition filed October 06, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on October 29, 2015, at Racine, Wisconsin.

The issue for determination is whether the agency correctly established a BadgerCare (BC) Plus overpayment against the petitioner in the amount of \$1,334.11 for the period from May 1, 2012 to November 30, 2012 and March 1, 2013 to March 31, 2013 due to client error.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jelena Jones

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Racine County. The petitioner was a household of three during the overpayment periods.

2. On September 24, 2015 the agency sent the petitioner three BadgerCare (BC) Plus overpayment notices. The first notice, under claim number [REDACTED], stated that the petitioner was overpaid \$1,111.34 in BC Plus benefits for the period from May 1, 2012 to November 30, 2012 due to client error. The second notice, under claim number [REDACTED], stated that the petitioner was overpaid \$140.77 in BC Plus benefits for the period from March 1, 2013 to March 31, 2013. The third notice, under claim number [REDACTED], stated that the petitioner was overpaid \$82.00 in BC Plus benefits for the period from March 1, 2013 to March 31, 2013.
3. On December 23, 2011 the agency sent the petitioner a notice stating that all household members would be receiving BC Plus coverage effective February 1, 2012. The notice went on to state that if the household's monthly gross income increased over \$3,088.34, the household had until the 10th day of the following month to report the increase in income.
4. In March 2012 the household's monthly gross income was \$4,103.87. This was over the household's reporting requirements. The household never reported an increase in income.
5. Between May 1, 2012 and November 30, 2012 the household received \$1,111.34 in BC Plus benefits. The household was not eligible for these benefits.
6. Between May 2012 and November 2012 the household income was as follows: \$2,924.84 in May 2012, \$2,763.98 in June 2012, \$2,660.47 in July 2012, \$4,281.44 in August 2012, \$2,717.84 in September 2012, \$2,643.02 in October 2012, and \$2,543.06 in November 2012.
7. On February 26, 2013 the household reapplied for public assistance benefits. The household reported a monthly gross income of \$2,453.92. The actual household gross income in February 2013 was \$4,794.20. The employer verified the petitioner's wife's income at the incorrect reported amount using an employment verification of earnings form.
8. Based upon this February 26, 2013 application the agency determined that the family was eligible for BC Plus benefits. Had the agency used the petitioner actual versus underreported income the family would not have been eligible for BC Plus benefits. The agency paid \$222.77 in BC Plus benefits in March 2013.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's MA Handbook, Appendix 6.2.1.1. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

A recipient of BC Plus benefits must report when his or her income increases above the reporting group requirement. BadgerCare Plus Handbook, § 27.3. For someone whose household income is over 100% of the Federal Poverty Level (FPL), but under 133% of the FPL at application or renewal, the person must report when his or her household exceeds 133% of the FPL. Id. This reported change goes into effect the month following the report.

In this case the household income increased above 133% FPL in March 2012. The household had until the 10th of April to report this change. The change would have been implemented effective May 1, 2012. The household never reported the change, and therefore there is an overpayment from May 1, 2012 through November 30, 2012.

In February 2013 the household reapplied for public assistance benefits. The household underreported their income during the application. The employer unfortunately verified the underreported income, giving rise to the overpayment for March 2013. It is the household's responsibility to provide accurate, correct, and complete information to the agency. Every time a person signs an application either manually, telephonically, or electronically, the person agrees that he or she is provided accurate information. The income disclosed on this application was less than the household's actual income. This caused an overpayment. Given the household's actual income, the household was not eligible for BC Plus benefits receive in March 2013.

The petitioner argues that this was not intentional, and was a mistake. I believe that this was an oversight or mistake by the petitioner and his wife, and that they did not intentionally deceive the agency. Their error should have been caught when the employer completed the employment verification of earnings form. Unfortunately, the employer made the same mistake they did, and failed to verify the petitioner's wife's overtime pay. The agency agrees. They allege that this overpayment was due to client error, not an intentional program violation. I agree with both the agency and the petitioner that this overpayment was caused by client error. Therefore, the agency correctly established this BC Plus Overpayment.

CONCLUSIONS OF LAW

The agency correctly established a BadgerCare (BC) Plus overpayment against the petitioner in the amount of \$1,334.11 for the period from May 1, 2012 to November 30, 2012 and March 1, 2013 to March 31, 2013 due to client error.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of November, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 23, 2015.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability